



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 31, 1998

Ms. Dawn D. Eisenhower
Personnel Director/P.I.O.
City of Watauga
7101 Whitley Road
Watauga, Texas 76148

OR98-3315

Dear Ms. Eisenhower:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120890.

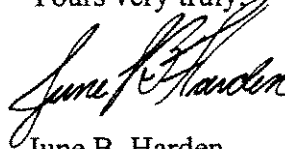
The City of Watauga (the "city") received several requests for various categories of information concerning the Watauga Code Enforcement Officers, Watauga Parks Development Corporation, city employees and records. Although the documents at issue were addressed in Open Records Letter No. 98-1550 (1998), you now seek to withhold additional information under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted documents.

You received the request for information on March 25, 1998. You did not seek an opinion on the redacted information until October 7, 1998. Consequently, you did not meet your statutory burden. The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We do not believe in this case that you have demonstrated a compelling reason under section 552.108 to overcome the presumption of openness. Open Records Decision No. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for nondisclosure). Therefore, you must release the redacted information to the requestor.

You also ask whether you may withhold information based solely on verbal communications with this office. The Open Records Act clearly states the procedures a governmental body must follow in order to seek an attorney general's decision. *See* Gov't Code §§ 552.301 - .308. Based on the explicit language of the statute, we conclude that a governmental body may not withhold information based solely on verbal communications with this office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/nc

Ref.: ID# 120890

Enclosures: Submitted documents

cc: Mr. Dennis M. Nelson
6621 Mona Lisa
Watauga, Texas 76148
(w/o enclosures)